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10/531,057

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John C. Evans

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EXAMINER

PATEL, TARLA R

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/531,057 | Applicant(s) EVANS, JOHN C. | |
| | Examiner TARLA R. PATEL | Art Unit 3772 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/9/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 4/9/08. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 6, 14 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims 1, 6, 14 and 26 recites that the density of the threads in the substrate is between 40-60 stitches in the widthwise direction and 70-90 stitches in the lengthwise direction is indefinite since, it is not clear that the density of threads in between 40-60 stitches and 70-90 stitches per what unit.

4. Claims 1, 6, 14 and 26 recites the limitation " density of threads in between 40-60 stitches and 70-90 stitches " in claim is not clear to stitches per what unit, because one having ordinary in art would require the per what unit since the density of thread is in widthwise and lengthwise direction. There is insufficient antecedent basis for this limitation in the claim.

5. Claims 1, 6, 14 and 26 recites the limitation "the chain stitches" and "the inlay stitches" in claim is not clear. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 5, 6, 7, 8, 11, 12-14, 15, 16 and 19-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parker et al. (5,755,678) in view of Parikh et al. (5,133,199), in view of WADSWORTH et al. (2003/0129908), in view of Effenberger et al. (5,141,800) and further in view of Keller (2004/0000173).

Parker et al. discloses a medical bandaging material (abstract), comprising a warp knitted fabric with stitches (column 5 lines 33-42), a reactive system impregnated into or coated onto the substrate (column 7 lines 42-46, moisture-curable resin such as polyisocyanate, column 11 line 38-column 12 line 2), the system remaining stable when maintained in substantially moisture-free conditions and hardening upon exposure to moisture to form a rigid, self supporting structure (column 5 lines 3-14 and column 11 lines 38-52) and tubular wrapping surrounding a substrate (18, column 7 lines 37-42), an outer container formed of moisture-impervious material (11 together with 10 and 13), a medical bandaging material positioned in the container in substantially moisture-free conditions and sealed therein against entry of moisture until use (column 7 lines 6-12). With respect to claims 12 and 21, Parker et al. discloses a tubular wrapping is formed of a synthetic, hydrophobic fabric (column 7 lines 37-40).

With respect to claims 13 and 22, Parker et al. discloses the reactive system comprises a blended polyisocyanate, polyol, catalyst and stabilizer (column 7 lines 50-60).

With respect to claim 20, Parker et al. discloses the container is fabricated of an aluminum foil laminate having an outer tear resistant layer, a central aluminum foil layer and inner heat sealable plastic layer (column 7 line 65-column 8 line 5).

With respect to claim 23, Parker et al. discloses the outer container defines a bag which receives a coil of medical bandaging material, and an elongated sleeve for dispensing medical bandaging material (column 7 lines 6-12).

With respect to claims 24 and 25, Parker et al. discloses a means for resealing an end of outer container against the entry of moisture after a length of the medical banding product has been removed therefrom (column 7 lines 16-270 and medical bandaging material contained therein are pre cut to a selected length and the ends of outer container are sealed against the entry of moisture therein (column 7 lines 28-33).

However, Parker et al. does not disclose the stitches are chain stitches are constructed from fiberglass yarns and the inlay stitch is constructed from an inelastic low modulus polymeric yarn, such that fraying and unraveling of a cut edge of substrate is prevented, inlay stitch is constructed from polypropylene yarn and medical bandaging material has an extensibility of between 20% and 35% in the lengthwise direction prior to initiation of the curing process.

However, Parikh et al. teaches a conformable stretch bandage with chain stitch and inlay stitch in yarn inlay (column 9 lines 7-11), further yarn include acrylic fibers such as polypropylene and polyesters (column 4 lines 38-43) and bandage of this invention, the

number of filling yarns per inch of bandage under 100 % extension (column 6 lines 42-54, that meets the required 20% to 35% extensibility), further applicant fails to disclose the criticality of these ranges to the invention, therefore the examiner interprets that the Parikh et al. meets the required ranges. At the time of invention was made, it would have been obvious to one having ordinary skill in art to have chain stitch and use the polypropylene material to have inlay stitch to device of Parker et al. with the properties of below 100% extension for the bandage, as taught by Parikh et al. to have better overlaying of the layer for the bandaging material and extension brings the crimped, curled and looped nature of the warp yarns into prominence as a dominant surface characteristic of the bandages and since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Parker et al. and Parikh et al. substantially disclose the invention, please see rejection above; however, Parker et al. and Parikh et al. do not disclose that polypropylene yarns constitute between 75% and 95% of the total weight of substrate.

However, WADSWORTH et al. teaches a stretchable, cotton-surfaced nonwoven, laminated fabric having spunbound polypropylene core layer with various weight % [0042, the disclosure that the various weight % is incorporated which has been broadly interpreted as one of ordinary in skill would apply the desire weight % of polypropylene material]. At the time of invention was made, it would have been obvious to one having ordinary skill in art to use any of weight % of polypropylene core layer as desire to device of Parker et al. and Parikh et al., as taught by WADSWORTH et al. have layer

fed into the calendar nip together and since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Parker et al. and Parikh et al. do not disclose that fiberglass yarns constitute between 75% and 95% of the total weight of substrate.

However, Effenberger et al. teaches a method of making laminated PTFE-containing composites and products thereof having a standard woven fiberglass fabric with 90 weight % (column 10 lines 9-15, the disclosure of 90 weight % meets the required ranges between 75% and 95%). At the time of invention was made, it would have been obvious design choice to one having ordinary skill in art to have the standard woven fiberglass fabric with 90 weight % to device of Parker et al. and Parikh et al., as taught by Effenberger et al. to do not cause delamination of the product and since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Parker et al. and Parikh et al. substantially disclose the invention, please see rejection above; however, Parker et al. and Parikh et al. do not disclose that the density of the threads in the substrate is between 40-60 stitches in the widthwise direction and 70-90 stitches in the lengthwise direction.

However, Keller teaches a moldable fabric using a combination of thermoplastic and elastomeric yarns and is knitted in a manner that imparts it with isometric stretching properties (abstract) to have compressive properties to make variety of product like

corsets, garments, bandages, leggings, shoulder pads [0048], further, a knit fabric is produced with a stitch count (that is synonyms of thread density) of 67/68 wales per inch and 93/94 courses per inch and a width of approximately 40/41 inches [0034]. At the time of the invention was made, it would have been obvious design choice to one having ordinary skill in the art to produce knit fabric with a stitch count with required ranges to the knit fabric of Parker et al. and Parikh et al., as taught by Keller to have elasticity to the substrate and since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

With respect to claims 5, 11 and 19, Parker et al. does not disclose the substrate weights between 120-170 grams per square meter. However, Parikh et al. teaches a conformable stretch bandage having bandage as formed has a weight of about 75 grams per square yard or 90 grams per square meter (column 6 lines 26-35). At the time of invention was made, it would have been obvious design choice to one having ordinary skill in the art to have workable ranges to the device of Parker et al. to 120-170 grams per square meter, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

With respect to claim 26, Parker et al. obviously discloses a method of applying a splint to a selected body part, comprising the steps of providing an initially-moldable, medical bandaging material positioned in a container in substantially moisture-free conditions and sealed therein against entry of moisture until use, medical bandaging material

comprising all the structural limitation described above, wetting medical bandaging material, urging medical bandaging material against selected body part and into a position whereby the body part is supported in a desired position, molding the medical bandaging material while flexible to the body part with the body part the desired position and allowing the medical bandaging material to harden on the body part (column 8 line 49-column 9 line 20).

Response to Arguments

8. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARLA R. PATEL whose telephone number is (571)272-3143. The examiner can normally be reached on M-T 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tarla R Patel/
Examiner, Art Unit 3772

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763